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FEDERAL COMMUNICATIONS COMMISSION
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January 24, 1994

VIA HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: GN 93-252; Regulatory Treatment of
Mobile Services

Dear Mr. Caton:

The attached letter was delivered to Karen Brinkmann regarding the above referenced matter.

Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,



Leonard J. Kennedy
Counsel for Nextel Communications, Inc.

LJK/rlf
Attachment

cc: Karen Brinkmann (w/o attachment)

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January 24, 1994

VIA HAND DELIVERY

Karen Brinkmann, Esq.
Special Assistant
Office of The Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: **GN 93-252: Regulatory Treatment of
Mobile Services**

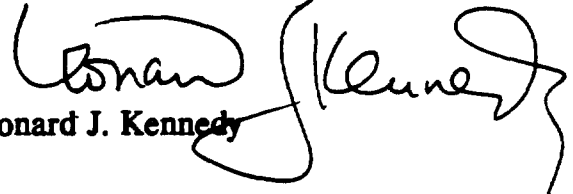
Dear Karen:

Enclosed please find a copy of the SMR/Section 332 fact sheet that we discussed at our meeting on January 18.

I have included this document as an ex parte filing in this docket.

Best personal regards.

Sincerely,


Leonard J. Kennedy

LJK/rif
Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SECTION 332 TRANSITION FACTS

ISSUE: What is the scope of the transition for private land mobile services reclassified as commercial mobile radio services ("CMRS")?

BRIEF ANSWER: In the words of Congressman Markey:

"The intent of this transition period is to provide those whose regulatory status is changed as a result of this legislation a reasonable time to conform with the new regulatory scheme."

TRANSITION MANDATE

- Congress included in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") a three year transition period during which private radio services that will be reclassified as CMRS continue to be regulated as private mobile services. Congress also required the Federal Communications Commission (the "Commission") during the transition to equalize the treatment of competing private and common carriers within one year by eliminating private radio regulatory burdens not applicable to common carriers.

- Enhanced Specialized Mobile Radio ("ESMR") is not a new service, but rather the implementation of improved technology on existing Specialized Mobile Radio ("SMR") systems. Therefore, the transition applies to ESMR. Most other private radio services do not satisfy the statutory prerequisites of CMRS (e.g., they are not provided on a for-profit basis). Thus, there would be no reason for a transition if it is not applicable to ESMR.

- For 20 years, private radio service rules encouraged business plans and operations relying on individualized contracts and customized services. This approach is fundamentally inconsistent with Title II common carrier requirements that services must be indiscriminately offered to the public at large. A three year transition for reclassified private mobile services is necessary to modify existing contracts, operations and marketing plans to conform with Title II regulatory requirements.

- For these reasons, the Conference Report states that any private land mobile service provided prior to enactment shall be treated as a private mobile service for three years. The Commission expressly determined that ESMR is part of the SMR service provided prior to enactment. The House Report states that while the Budget Act changes to their regulatory status are effective for common carriers in one year, reclassified private carriers have three years to comply with new CMRS regulations. It

also states that Commission rules cannot accelerate the three-year transition. Thus, Congress intended that the reclassification be implemented on a service-wide basis at the end of transition.

SCOPE OF THE TRANSITION

Any assertion that the transition only applies to systems or stations licensed before August 10, 1993 does not comport with statutory intent, as discussed below.

- ESMRs are networks of individually licensed SMR base stations. It would create an unworkable regulatory morass to apply different regulations to SMR stations licensed before and after August 10, 1993 within a single ESMR system -- in direct contradiction of the Congressional purpose of transition and intent to promote a robustly competitive CMRS.

- Congress did not intend flash-cut reclassification -- statute provides full year for Commission to rationalize inconsistent private carrier (Part 90) and common carrier (Part 22) rules; e.g., loading requirements, co-channel spacing. Until this is accomplished, Part 90 carriers cannot begin to prepare for common carrier regulation.

- *ESMR will be the first nationwide, all-digital voice and data mobile communications information superhighway.* Regulating ESMR systems licensed before August 10, 1993 as private, with stations or systems licensed post-Budget Act enactment as CMRS, would frustrate roaming and impede expeditious build out of nationwide digital ESMR network. Balkanized regulation of some ESMR systems as private and others as CMRS would create numerous regulatory, technical and marketing obstacles to implementing seamless efficient roaming and impose unwarranted higher costs. Congress intended the transition to enable Commission and ESMR industry to plan for a *unified transition to CMRS regulation on a service-wide basis* at the end of the three year period.

- As discussed above, the transition applies to services regulated as private as of August 10, 1993. There is no statutory authorization to reclassify individual service providers upon a change in ownership.